

Department of Law
NEW CASTLE COUNTY

PUB WKS-ADM

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MEMORANDUM

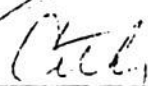
TO: Albert W. Madora
Director of Public Works

RE: Sewer Agreement between New Castle County and
City of Newark


DATE: March 23, 1979

Attached is a signed and sealed copy of the sewer agreement between the City of Newark and the County.

I thought a copy should be on file with your department.


CATHERINE S. MULHOLLAND
ASSISTANT COUNTY ATTORNEY

CSM/ld
Attachment


~~Pat: Make 2 copies please. of~~
~~3/26/79~~

File - Separate Folder

NEWARK SEWER AGREEMENT

ARTICLE I

GENERAL CONDITIONS

1) Effective Date. This agreement shall become effective on 12 noon, January 1, 1979 and shall remain in effect until 12 midnight, June 30, 1982, unless sooner suspended or terminated in accordance with the terms of this agreement.

2) Extension. Should the City and County mutually agree, this agreement may be extended and renewed and/or renegotiated with regards to operations after June 30, 1982, and at five-year intervals thereafter.

This agreement shall be automatically extended for additional periods of five years each, after June 30, 1982, unless the City or County shall give notice of its desire to enter into discussion or renegotiation of extension or renewal. Such notice shall be provided in writing not less than 90 days prior to the termination date of this agreement or any automatic period of extension.

3) Unforeseen Requirements. In the event mandatory requirements imposed upon the County or Newark by statute or regulations enforceable by the Environmental Protection Agency or any other Federal or State Agency, renders impossible the performance by the County or Newark of this agreement, Newark and the County agree to accept and abide by flow limitations, and the like thus mandated. Any additional systems cost incurred by unforeseen requirements shall be paid by the County but may be included as a factor in future rates.

4) Absolute Impossibility. In the event that there is a significant destruction or disablement of the County's system or any part thereof, the City and County shall be relieved of obligations under this agreement for the period of time necessary to correct the destruction or disablement. However the County agrees to use every reasonable means to restore the sewer service and agrees not to favor other users of the system in the event the capacity is limited unless justified by sound engineering practices.

5) Assignment or Transfer of Agreement. The parties hereto shall not assign, subcontract, or otherwise transfer the agreement or any portion thereof except on written consent of the other party.

6) Modification. This agreement contains the full and complete understanding between the County and Newark and supersedes any and all previous written agreements or proposals, whether oral or written. With the exception of modification in the manner set forth elsewhere in this agreement, the agreement may not be modified except by written or duly executed amendatory agreement of parties hereto. The parties agree that this agreement represents resolution of uncertainties attendant upon application and enforcement of the parties' previous agreements and understandings. Any and all claims, disputes or disagreements, now existing or which in the future may be raised arising out of or resulting from the parties' previous agreements or understandings, are hereby abandoned, waived or resolved, excepting any suit in law or equity presently before the courts.

7) Arbitration. All disagreements which may arise between the parties concerning the application, meaning, or interpretation of this agreement shall be decided by arbitration in accordance with the rules of the American Arbitration Association then prevailing unless the parties mutually agree otherwise. No arbitration arising out of or related to this agreement, shall include by consolidation, joinder, or any other matter, any additional party not a party to this agreement except by written consent containing specific reference to this agreement and signed by parties hereto. Any consent to arbitration involving any additional party or parties shall not constitute consent to arbitration of any dispute not described therein or with any party not named or described therein. This agreement to arbitrate and any agreement to arbitrate with an additional party or parties duly consented to by the parties hereto shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this agreement and with the American Arbitration Association. The demand shall be made within thirty (30) days after the aggrieved party has become aware of the disagreement concerning

the application, meaning, or interpretation of this agreement. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such disagreements would be barred by the applicable Statute of Limitations. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Arbitration costs shall be split equally.

8) Cooperation. The parties agree to cooperate in all matters pertinent to this agreement to the fullest extent possible. The City agrees to advise the County and the County agrees to advise the City regularly as to the status of new or proposed certificates of occupancy and sewer permits and make available other data and information having an impact upon the volume, character, and treatment of sewage.

9) North Christiana-White Clay Interceptor. The City maintains, operates, and uses that part of the North Christiana Interceptor within the City of Newark and upstream along White Clay Creek from the sewerage meter, or meters, and the County shall not be responsible for the maintenance, operation or use thereof.

ARTICLE II

STANDARDS AND REGULATIONS

- 1) The County owns a sewer interceptor system consisting of an interceptor line which runs from two points at the City of Newark to the City of Wilmington, where said sewage is treated by the City of Wilmington. The County agrees to receive in its network the sanitary sewage and industrial wastes discharged from the City.
- 2) The City agrees to maintain and operate the Public Sanitary sewer system and bill its customers within the City of Newark.
- 3) Cooperation. The City and County agree to cooperate and assist the County in investigating accidental spills or discharges of toxic pollutants generated by industries located in the City.
- 4) Maintenance. Both parties agree to continue the current practice of maintaining all sewers in their respective jurisdictions.
- 5) Federal Grants. City agrees to cooperate with the County in the collection of the industrial portion of the sewage system assets provided by applicable Federal Funds pursuant to P.L. 92-500 and pertinent Environmental Protection Agency regulations. City agrees to transfer received, less administrative expenses, to the County.
- 6) Liability. Without otherwise limiting any claims between the parties, City agrees to accept responsibility for damages to the County system and/or the Wilmington Treatment Plant from spills or discharges of toxic pollutants generated by industries within the City in excess of the then current Waste Treatment Limitation Regulations of the City of Wilmington or of New Castle County.
- 7) Annexation. In the event of an annexation by the City of lands now within County jurisdiction, the City will assume full and complete responsibility for sewer facilities constructed by or for the County within the annexed area including existing debt service on such facilities. The Finance Directors will agree upon a fair and equitable amount for each such case.

8) Single District. The City agrees to the concept of a single geographical district for computation and application of the County's sewer user charge system. Such an area encompasses all areas to which the County provides collection and/or transmission and/or treatment of sewage.

9) Discharge Limitations. The City agrees to formulate and enforce necessary rules and regulations and to do whatever may be necessary so that the quality of the sanitary sewage and industrial waste discharge into the County's intercepting sewers will meet the same quality of sanitary sewage and industrial waste discharge as exists in the remaining County system. The City agrees to review with the County any new or proposed discharges from any industry in the City in accordance with the current Waste Treatment Limitation Regulations of the County.

10) Capacity. The City and County agree that the existing total flow capacity of the Cool Run Interceptor at Manhole #15 (Barksdale Road) is 2.5 million gallons per day (MGD). Newark agrees to reserve capacity in the interceptor system from the Brookside Metering Station to Manhole #15 (Barksdale Road) for County flows to 1.25 MGD peak flow.

10 A) Peak Flow. The City and the County each agree to apply a peaking and infiltration factor of 2.5 to the average metered water consumption or in the case of unmetered private well-users by the average of other metered like customers or by 80,000 gallons/per year to determine flows into the interceptor. The factor shall be considered to include an allowance for infiltration of 17% of the average water metered consumption as determined above. If either party feels that a significant change in the infiltration factor may have occurred, the parties, jointly or singly may meter flows to determine actual infiltration from both the City and County systems. If such metering is jointly conducted, all costs shall be shared. If conducted singly, the party metering shall fully inform and consult with the other party. If such metering is conducted, and upon 30 days notice by either party, the results shall be used to recalculate the infiltration factor used in peak flow calculations.

11) Information. The City and County shall periodically exchange technological data, including strength and flow data with respect to the City's and County's systems.

12) Infiltration/Inflow. The City will permit the County to monitor the City's infiltration/inflow efforts, and will provide access to the County to data required to accomplish this objective. The City and the County agree to maintain efforts of inflow/infiltration rehabilitation.

ARTICLE III

CHARGES AND METHOD OF PAYMENTS

1) The County incurs certain costs in the operation of its sanitary sewer system. Those costs and the basis for allocation are detailed in the WRA Report on Guidelines and Procedures for Interjurisdictional Rate Setting. Said report and guideline manual and timetable including any agreed upon revision, update or addendum of said report shall be incorporated into this agreement and shall be adhered to by the County and City in determining costs.

2) The County will establish its sewer user charges based upon budget projections of its costs as established in the Report and Guidelines for Interjurisdictional Sewer Rate Setting. These charges shall appear in the New Castle County Code. The County shall notify the City in writing not later than April 1, of each year of the tentative rate to be effective for the next immediate County fiscal year. If notice is not received, the existing rate shall continue in effect. If the County chooses to charge its users less than a rate based on budgeted projections of its costs as established in the Report and Guidelines, then its charges to the City shall also be adjusted accordingly. Any reduction in rate due to a contribution to sewer fund financed through other revenue sources, shall be applied in a manner consistent with the above WRA Report on Guidelines and Procedures for Interjurisdictional Sewer Rate Setting.

3) As of the fiscal year beginning on 7/1/79, and continuing during the time of this agreement, payment of sewer user charges by the City to the County shall be made quarterly in advance, following receipt of a statement for same bearing a due date 30 days thereafter. Bills not paid on the due date and delinquent in excess of 30 days shall have an interest charge at bank prime rate added to it.

4) The County shall bill the City for treatment and transmission costs only. These costs shall be calculated as follows:

a) City shall be billed quarterly in advance based upon the data from the immediately preceding calendar quarter. The City shall submit within 10 calendar days after the close of each quarter water consumption for all in-town water customers plus sewage from those industrial customers within the City being metered.

-- b) Calculation of charges shall be based upon the prior quarters' volume, BOD, and suspended solids (S.S.), applied as a multiplier to applicable charges. Flow volume to be determined by the City's metered water consumption of its customers within the City, plus the metered sewage from those industrial customers within the City being metered.

c) Flow, BOD and S.S. rate shall be determined annually by County ordinance.

5) In view of previous agreements concerning flows entering the City from the County, the County agrees to share in an equitable manner with the City pumping and line maintenance costs specifically those costs attributable to County use of the City system. The Finance Directors will agree upon fair and equitable costs based upon City and County data.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement on the day and year aforesaid.

THE CITY OF NEWARK

By: Peter Walsh
City Manager

Attest: Betty J. Smith
City Secretary

NEW CASTLE COUNTY

By: Thurmond J. Jenkins
County Executive

Attest: Susan H. Chilton

Approved as To Form On This

_____ day of _____, 1979:

City Solicitor

Approved As To Form On This

_____ day of _____, 1979:

County Attorney

AMENDMENT

FOR each of the three-month periods ended March 31, 1979, and June 30, 1979, credit of \$75,000 shall be applied to the sewer bill submitted by New Castle County to the City of Newark. Those bills shall otherwise be computed under the same methodology utilized for computation of prior quarterly bills submitted by the County during its 1979 fiscal year.

IN WITNESS WHEREOF, the parties hereto have duly executed this amendment on the day and year aforesaid.

THE CITY OF NEWARK

By: _____

City Manager

Attest: _____

City Secretary

NEW CASTLE COUNTY

By: _____

County Executive

Attest: _____

Approved As To Form On This

_____ day of _____, 1979:

City Solicitor

Approved As To Form On This

_____ day of _____, 1979:

County Attorney